

Doc Code: AP.PRE.REQ

PTO/SB/33 (07/05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 13463
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.11, 1.14 and 41.6].		Application Number 09/808,436
on <u>August 21, 2006</u>	Filed March 14, 2001	
Signature 	First Named Inventor Michael J. Rojas	
Typed or printed name Katherine R. Vieyra	Art Unit 3639	Examiner Rutao Wu
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.		
This request is being filed with a notice of appeal.		
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		
I am the		
<input type="checkbox"/> applicant/inventor.		
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Signature Katherine R. Vieyra	
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>47,155</u>	Typed or printed name 516-742-4343	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34	Telephone number Date <u>August 21, 2006</u>	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.		
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.		

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Michael J. Rojas

Examiner: Rutao Wu

Serial No: 09/808,436

Art Unit: 3639

Filed: March 14, 2001

Docket: 13463

For: METHOD AND PROGRAMMABLE
DEVICE FOR TELECOMMUNICATIONS
APPLICATIONS

Dated: August 21, 2006

Confirmation No.: 3775

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

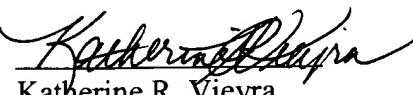
Sir:

The Applicant has filed this Pre-Appeal Brief Request for Review pursuant to the New Pre-Appeal Brief Conference Pilot Program announced in the OG of 12 July 2005 in reply to the outstanding Official Action dated April 19, 2006.

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

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Dated: August 21, 2006



Katherine R. Vieyra

REMARKS

Clear Error in the Examiner's Rejection

The Examiner commits clear error in the rejection of claims 1-4 and 6 under 35 U.S.C. §102(e) as being anticipated by Saari, et al., U.S. Patent 6,338,046. In the Office Action mailed April 19, 2006 (hereinafter “OA0419”), in Response to Arguments, the Examiner states that Saari et al. discloses that a user can set the service class, and that it is inherent since each network device has an IP address, then the data transferred can be classified based on the sources address transferring to the destination address. (OA0419, page 3, lines 6-18). The Examiner also states that Saari et al. discloses that each node for a given connection may perform a table look up procedure (OA0419, page 3, lines 15-16), and states that it is inherent that Saari teaches classifying the detected data packets based on the source and destination address. Applicant submits that this is clear error.

The table look up procedure of Saari does not explicitly or inherently disclose the classifying procedure of applicant’s invention. Table look up, as known in the art, is a procedure for searching for data in a preexisting “table” or data structure. A data structure must be created, populated and stored prior to the execution of a table look up. Thus at best Saari et al. inherently discloses that, prior to the operation of his system, a data structure was created containing source and destination IP addresses or categories therefor, such that during the operation of Saari’s system, information about the data packets can be obtained or “looked up” in a table. Therefore, the Examiner is in error when he states that Saari’s disclosure of a table look up procedure regarding the real time connection of packets anticipates the present application’s recitation of classifying the detected data packets, moving over the network, based on the source and destination IP address.

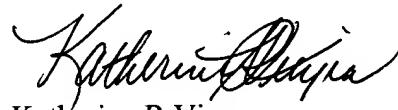
Further, as stated in applicant's response filed February 6, 2006, while Saari et al. discloses that many factors could be used as variables within the charging formula (column 4, lines 31-34), he does not disclose or suggest classifying the variables as part of his procedure, particularly not according the classification variables of source or destination IP address claimed in the present application. For example, Saari et al. does not suggest combining, grouping, sorting or otherwise manipulating the billing cells in a way that would necessitate their being classified. Instead, Saari et al. states that the relevant charging information acquired by the billing unit from the billing cell is only used to compute the cost of connection usage. (column 5, lines 47-48).

The Examiner also asserts that the recitation of "assigning the classified data packets to a network user" in claim 1 is disclosed in Saari et al. (OA0419, page 5, lines 11-12). Applicant respectfully states that this is clear error. Saari et al. merely discloses that "a user may interact with the network" (column 4, lines 10-14). Saari et al. also discloses transmitting a billing cell to a user (column 7, lines 18-19) but not including or assigning user information within the billing cell, as the present claim 1 recites.

Conclusion

Based on the above arguments and remarks, applicant respectfully submits that there are clear errors in the Examiner's rejections. Thus, applicant submits that the rejections must be reversed.

Respectfully submitted,



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